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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,279	07/16/2003	John Michael Hughes	F6173(V)	3024
201 7590 03/16/2007 UNILEVER INTELLECTUAL PROPERTY GROUP 700 SYLVAN AVENUE, BLDG C2 SOUTH ENGLEWOOD CLIFFS, NJ 07632-3100			EXAMINER THAKUR, VIREN A	
			ART UNIT 1761	PAPER NUMBER
			MAIL DATE 03/16/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/621,279	Applicant(s) HUGHES, JOHN MICHAEL	
	Examiner Viren Thakur	Art Unit 1761	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 March 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1: ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-3, 5, 7-10, 14 and 31.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER


11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: Continuation of 11. does NOT place the application in condition for allowance because: Regarding Applicant's assertion that a package that "serves the food" to the consumer may not be the same as being suitable for eating out of while holding the container, the Examiner respectfully disagrees. To the skilled artisan, it can be seen that the package of Smart et al. would have been capable of being held, and being eaten out of while held by the consumer. By comprising insulation, it would have been obvious to the skilled artisan that the insulation layer would have insulated the heat within the package after cooking. Therefore, the package would have been capable of being "comfortably" held by the consumer. The Examiner further asserts that the phrase "comfortably" is still an indefinite term since comfortable to one consumer could be uncomfortable to another consumer. Similarly, heat that burns one consumer might not burn another consumer. On page 7 of Applicant's arguments, it seems that Applicant agrees that Smart et al. recognize the need to "maintain freshness and to eat food directly from the food package."

Regarding the positioning of the insulating layer, Smart teaches wherein the insulating layer surrounds the entire package. Thus, as disclosed in the previous Office Action, the insulating layer that overwraps the top of the pizza would have been at least 0.5 centimeters above the base, since pizza has been well known to be at least about 0.5 centimeters. Regarding the pouch's ability to stand, it is interpreted that the pouch is standing, albeit in a low profile. However, this still meets the instantly claimed limitations.

Regarding Applicant's assertion that Galomb et al. does not disclose or suggest an oxygen barrier comprised of PVDC or EVOH, the Examiner asserts that PVDC and EVOH have been well established in the art as oxygen barrier films. As cited on the record, Galomb et al. teach wherein the flexible material "forms a suitable barrier to the ingress of air through it..." Therefore, it would have been obvious to the skilled artisan to use PVDC or EVOH as these are well known oxygen barriers. (CAN CITE THE PLASTIC OXYGEN PERMEABILITY AS EVIDENCE). In being comprised of a laminate of polyester and polyethylene, it would have been obvious that the package of Galomb et al. would have been capable of being microwaved. Although milk and cereal can be eaten cold, it would have been obvious to the skilled artisan that cereals with milk to have heated a cereal with milk for the purpose of eating a warm cereal, and since the package of Galomb et al. is made of polyester and polyethylene it would have been obvious to that the package could have been heated for this purpose.

Regarding claim 14 as being unpatentable over Smart, et al. and Galomb in view of Lawless, et al., Applicant asserts that the package of Lawless et al. is not microwaveable, insulated, does not have a base for standing and is not intended to be eaten from directly. The Examiner respectfully asserts that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); In re Merck & Co., Inc., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Lawless et al. is relied on to teach that using a hanging orifice can prevent damage to the food, which would have occurred as a result of stacking. Therefore, based on the teachings of Lawless, it would have been obvious to hang the package of Smart et al. for the purpose of preventing prevent damage to the contents...


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